

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

11 SHANNON JACOBS, ) Case No. CV 12-8368-GAF(AJW)  
12 Petitioner, )  
13 v. ) MEMORANDUM AND ORDER  
14 STANDING DIRECTOR OF CDCR, ) DISMISSING PETITION  
15 Respondent. )

17 On September 17, 2002, petitioner pleaded no contest to two counts  
18 of second degree murder and admitted that he had used a weapon during  
19 the commission of the crimes. He was sentenced to state prison for two  
20 terms of fifteen years to life. Petitioner did not appeal. [Petition  
21 at 2]. Petitioner filed numerous state habeas petitions, all of which  
22 were denied. [Petition at 3-5].

23 On November 1, 2005, petitioner filed a habeas petition in this  
24 Court. Case No. CV 05-8537-GAF(AJW).<sup>1</sup> Judgment dismissing the petition  
25 as untimely was entered on June 27, 2006. Petitioner's requests for a  
26 certificate of appealability were denied both by this Court and by the

<sup>1</sup> The Court takes judicial notice of official court files. See Fed. R. Evid. 201; Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001).

1 Ninth Circuit Court of Appeals.

2 Petitioner filed a second habeas petition in this Court on January  
3 6, 2009. Case No. CV 09-0070-GAF(AJW). That petition was dismissed  
4 for lack of jurisdiction. Both this Court and the Ninth Circuit Court  
5 of Appeals denied petitioner's requests for a certificate of  
6 appealability.

7 Petitioner filed the present habeas petition in this Court on  
8 September 28, 2012. Like the petition filed in Case No. CV 05-8537-  
9 GAF(AJW), this petition also challenges petitioner's 2002 murder  
10 conviction. [Petition at 2].

11 A federal court must dismiss a second or successive petition that  
12 raises the same grounds as a prior petition. 28 U.S.C. § 2244(b)(1). A  
13 federal court must also dismiss a second or successive petition raising  
14 a new ground unless the petitioner can show that (1) the claim rests on  
15 a new, retroactive, constitutional right or (2) the factual basis of  
16 the claim was not previously discoverable through due diligence, and  
17 those new facts establish by clear and convincing evidence that but for  
18 the constitutional error, no reasonable factfinder would have found the  
19 applicant guilty of the underlying offense. 28 U.S.C. §  
20 2244(b)(2)(A)-(B). It is not the district court, however, that decides  
21 whether a second or successive petition meets the requirements  
22 permitting a petitioner to file a second or successive petition.  
23 Rather, "[b]efore a second or successive application permitted by this  
24 section is filed in the district court, the applicant shall move in the  
25 appropriate court of appeals for an order authorizing the district  
26 court to consider the application." 28 U.S.C. § 2244(b)(3)(A); see  
27 Felker v. Turpin, 518 U.S. 651, 656-657 (1996). Absent authorization  
28 from the Court of Appeals, this Court lacks jurisdiction over this

1 second or successive petition. Greenawalt v. Stewart, 105 F.3d 1268,  
2 1277 (9th Cir.), cert. denied, 519 U.S. 1102 (1997).

3 Petitioner's first federal habeas petition was dismissed with  
4 prejudice as untimely. A dismissal with prejudice under the statute of  
5 limitation renders subsequent petitions successive under the AEDPA.  
6 McNabb v. Yates, 576 F.3d 1028, 1029-1030 (9th Cir. 2009) (per curiam).  
7 Because petitioner has not obtained leave from the Court of Appeals to  
8 file a successive petition, this Court lacks jurisdiction to consider  
9 it. Accordingly, the petition for a writ of habeas corpus is dismissed  
10 for lack of jurisdiction.

11 **IT IS SO ORDERED.**

12  
13 Dated: October 25, 2012



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16 Gary A. Feess  
17 United States District Judge  
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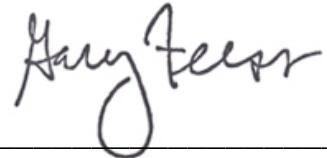
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Petitioner, )  
v. ) JUDGMENT  
STANDING DIRECTOR OF CDCR, )  
Respondent. )

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It is hereby adjudged that the petition for a writ of habeas corpus is dismissed for lack of jurisdiction.

Dated: October 25, 2012



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Gary A. Feess  
United States District Judge